IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

RCRev..No. 267 of 2007()

RCA.34/2006 of II ADDL.DISTRICT COURT,ERNAKULAM
RCP.123/2004 of III ADDL.M.C.EKM (RENT CONTROL)
.....

REVISIONER PETITIONER/APPELLANT/RESPONDENT

K.G.BOBAN, DOOR NO.33/158, VENNALA,
PADIVATTOM, EDAPPALLY PO, PIN: 682 024,.

BY ADV. SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR

RESPONDENTS: RESPONDENT/PETITIONER:

S.N.D.P.BRANCH NO.164, VENNALA,
PADIVATTOM, EDAPPALLY PO, COCHIN-24,
REPRESENTED BY ITS SECRETARY,
K.PARAMESWARAN, S/O.KATE KOCHAYYAPPAN.

BY ADV. SRI.S.SREEKUMAR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 20/08/2007 ALONG WITH RCR NO.268/07 & CONNECTED CASES,, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &
HARUN-UL-RASHID, JJ.

R.C.R. NOS. 267, 268, 269 &
270 OF 2007

Dated 20th August, 2007.

ORDER

Balakrishnan Nair, J.

The tenants are the revision petitioners. The respondent is the landlord. The landlord had a building in which there were seven tenants. The petition schedule building is situated in the middle of a triangular like plot. On the northern side of it there is a Gurumandiram, wherein the statue of Sreenarayana Guru is consecrated. The petition schedule building is immediately on its southern side. Beyond the building on the southern side, there is a small open space. Beyond that space, there are other buildings owned by the landlord. The landlord wanted vacant possession of the building to demolish it, so that it can be used as an open space attached to the Gurumandiram, for the convenience of the devotees. Though seven R.C.Ps were filed, two of them were compromised. The Rent Control Petitions were filed on the ground of bona fide need under Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as"the Act"). All of them were allowed. Against the decision of the Rent Controller, four tenants took up the matter in appeal. R.C.A Nos. 31 to 34

of 2006 were heard together by the Appellate Authority and dismissed by the common judgment dated 22.6.2007.

2. The need under Section 11(3) was found in favour of the landlord concurrently by both the authorities. The revision petitioners herein attack the said finding on various grounds. Since the judgment of the Rent Controller and also that of the Appellate Authority are common judgments and since common grounds were urged in these revisions, we dispose of them by this common order.

3. The learned counsel for the petitioners attacked the finding of the Appellate Authority on bona fide need, as one made without reference to the materials on record. Further, he has got a complaint that though a commission application was moved for reporting on the space available, which could be used for the temple and where constructions are going on, it was allowed only in part by the Rent Controller. The learned counsel submitted that if the application was fully allowed and a report was obtained, it would have disproved the claim of the landlord regarding the bona fide need under Section 11(3).

4. The evidence in this case consists of the depositions of PW1 and Rws 1 to 9. From the side of the landlord Exts.A1 to A20 were marked and from the side of the tenants Exts.B1 to B25 were marked. Apart from that,

court exhibits C1 to C3 were also marked. PW1 was examined on behalf of the landlord, which is the local branch of the S.N.D.P. Yogam. He deposed that every day the devotees in the Gurumandiram are increasing. On certain days like Prathishta dinam. Mahasivarathri, Chathaya dinam etc., huge crowds assemble there. Now, between the Gurumandiram and the tenanted building there is only the statutory distance, as provided under the Building Rules. Therefore, serious inconvenience is caused to the devotees. So, the Branch Committee resolved to demolish the building and to add the said space also for the use of the devotees of the temple. It is a bona fide need, it is submitted. To get over this evidence, the witnesses from the side of the tenants stated that only on very few days there will be large crowds. On all other days there are not large number of devotees. Both the authorities noticed that at least on some days, there will be large crowds, even according to the witnesses of the tenants. So, they arrived at a finding that the need urged is bona fide. They also met the contention of the tenants that recently a godown and other buildings were constructed and let out to the tenants and if that space was kept vacant, it could have been used for parking the vehicles of the devotees. The lower authorities found, relying on Ext.C1 report, that the age of the Gurumandiram and those buildings were more or less the same and they believed the oral testimony of PW1

that those buildings were constructed before the construction of the Gurumandiram. It is a finding of fact, with which this Court cannot interfere. It is true, if that space was available, the same can be used for parking the vehicles of the devotees. But, for the congregation of the devotees, the space occupied by the petition schedule building alone will be suitable, as the same is the only adjacent space. The members of the congregation cannot assemble in the aforementioned space occupied by the godown and other buildings, as in between the Gurumandiram and those buildings the petition schedule building is standing. So, we affirm the concurrent finding of the Appellate Authority as well as the Rent Controller that the space occupied by the petition schedule building will be more convenient for the use of the devotees coming to the temple.

5. The lower authorities also considered whether the tenants are entitled to get the benefit of the second proviso to Section 11(3) of the Act. It was found that they have failed to prove that they are solely depending on the income from the petition schedule rooms and there is no other suitable room in the locality. The learned counsel for the revision petitioners contended that the relative hardship of the tenants with reference to the convenience obtained by the landlord was not considered by the courts below. We feel that it is not a point relevant under Section 11(3). In view

of the above position, we feel that no relief could be granted to the petitioners herein. The Appellate Authority is the last court of fact. Its findings are based on evidence. They can in no way be described as perverse or one which no man in his senses will arrive at.

6. In the result, the Rent Control Revisions fail and they are dismissed. The learned counsel for the revision petitioners prayed for some time to vacate the tenanted premises. We heard the learned counsel for the landlord also, who has filed a caveat application. The revision petitioners are given six months' time from today to vacate the premises, on condition they file an affidavit before the executing court, undertaking to vacate the premises within six months from today and agreeing to pay the rent due without fail, on the due dates. The affidavit in this regard shall be filed within three weeks from today.

K.BALAKRISHNAN NAIR, JUDGE.

HARUN-UL-RASHID, JUDGE.

Nm/